

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 14760, of Bernard S. Chabel and Jennifer O. Ryan, pursuant to 11 DCMR 3107.2, for a variance from the allowable percentage of lot occupancy requirements (Sub-section 403.2), a variance from the rear yard requirements (Sub-section 404.1), a variance from the width of open court requirements (Sub-section 406.1), and a variance from the prohibition of making an addition to a nonconforming structure which now exceeds the allowable percentage of lot occupancy (Sub-section 2001.3) to construct a deck addition to a single-family dwelling in an R-4 District at premises 3170 - 17th Street, N.W., (Square 2602, Lot 67).

HEARING DATE: March 9, 1988  
DECISION DATE: April 6, 1988

FINDINGS OF FACT:

1. The subject property is located in an R-4 District on the west side of 17th Street between Lamont Street and Kilbourne Place, N.W., and is known as 3170-17th Street, N.W.
2. The frontage of 17th Street in this block is developed with a solid row of townhouses which are similar in appearance.
3. The subject lot is 20 feet by 100 feet. It is improved with a three-story townhouse which has an open porch at the rear. The house occupies the entire width of the lot at the front, narrowing somewhat at the rear to allow for the open court. Because of the slope of the land, the front of the house appears to be three stories in height while at the rear four stories are visible.
4. The rear yard which is approximately 23 feet deep and 20 feet wide, is generally level and is accessible from a rear alley and is used only for parking.
5. The applicants propose to construct a wooden deck which would extend out from the existing back porch. The deck would be constructed at the first-floor level of the house, which from the rear constitutes the second floor. It would therefore be built one story above ground level.
6. Under Sub-section 404.1 of the Zoning Regulations, a rear yard in an R-4 District shall have a minimum depth of

20 feet. The subject lot has an existing rear yard of 23 feet which presently is conforming. Construction of the proposed deck would reduce the rear yard to a depth of about 3.1 feet requiring a variance of 16.4 feet or 84.5 percent.

7. The deck which the applicants propose would occupy 340 square feet-an additional 17 percent of the 2,000 square foot lot. Overall lot occupancy would thus be increased to approximately 79 percent, an increase of nearly 20 percent over the 60 percent occupancy allowed under Sub-section 403.2 of the Regulations. A variance would be required of 435.1 square feet or 36.25 percent.

8. Under Sub-section 406.1, the width of an open court shall not be less than 6 feet. The proposed deck would leave no more than 1.5 feet of open court requiring a variance of 4.5 feet or 75 percent.

9. The subject lot is configured like the other lots on the block.

10. Other lots in the area are improved with additional non-conforming buildings in the rear. However, these were built prior to the Zoning Regulations which became effective May 12, 1958.

11. The applicants, by a written statement dated December 22, 1987, and testimony at the public hearing, gave several reasons which they felt justified granting the requested variances to allow construction of the proposed deck. It was stated by the applicants that they have to park their car in the rear because there is inadequate parking in the neighborhood. Consequently, there is not enough space remaining in the yard for gardening and recreational activities.

12. The applicants stated that the deck is needed to provide their young children with a play area since there are no parks in the Mount Pleasant area, and the neighborhood is unsafe for children.

13. The applicants stated further that the aesthetics of the neighborhood would be greatly enhanced by the construction of the deck. They noted that it would conceal the undistinguished pavement now covering most of the back lot, and like the decks of other homeowners, improve the overall appearance of the alley.

14. It was stated by the applicants that the deck would make their lot safer by creating a physical and psychological barrier that would deter alley traffic from entering their yard.

15. The applicants stated that because of the small size and the shape of their property, they are without practical alternatives for a location for the deck.

16. The applicants further stated that the lot occupancy and setback of the proposed deck would be consistent with those of their neighbors. Many of the homes in the area have garages, sheds and other out buildings covering virtually the entire lot. A number of homes even have decks similar to the deck proposed here. Few of those properties have any significant open space or yard in the rear of the property.

17. The applicants indicated that the Board recently granted a variance, requested by their neighbor, to build a garage on their lot. After construction, 1,692 square feet, of the 2,000 square foot lot was covered. A variance of 492 square feet was granted. They noted that the variance granted was greater than what is presently being requested.

18. The Office of Planning (OP), by memorandum dated March 2, 1989 recommended denial of the variance requests. It was the opinion of the OP that the applicants' proposed deck would adversely affect air and light of the neighboring properties. Noting that the applicants' property and use are not uncommon, the OP concluded that the applicants have not met the burden of proof. The Board agrees with the Office of Planning.

19. The Advisory Neighborhood Commission (ANC) 1E, by letter dated February 17, 1988, recommended approval of the application. The ANC 1E representative testified that they live in a wonderful neighborhood but it is not conducive to rearing children. The ANC stated that there are no playgrounds in Mount Pleasant, and agreed with points raised by the applicants regarding the lack of clean, safe place for children to play. Admittedly, there are other problems in the neighborhood, however, the ANC is very concerned about losing families with young children because of inadequate areas for outdoor activity. The ANC indicated that at present, children must be taken to another neighborhood for outdoor recreation. The Board does not agree with the recommendation of the ANC and finds that the issues raised do not relate to the variance issues the Board must address.

20. By statement dated March 9, 1988, and through testimony at the hearing, two of the applicants' neighbors expressed opposition to the granting of the variances. The neighbors opposed building the deck because it would add to the overcrowding of the land and block the view, creating a feeling of confinement. Further, it was felt that the deck would adversely affect light and air. The opponent further testified that to grant the variances would be precedent setting, making it likely that other neighbors will seek

similar variances. It was noted that to grant the variances in this case would be inconsistent with a prior decision rendered on an application by another neighbor to build a garage and deck. The garage variance was approved on the condition that the deck not be built. Granting the variances in the present case would also be inconsistent with the recommendations of the Office of Planning and with the Zoning Regulations.

21. There is adequate space on the applicant's lot for parking and recreation if the lot is used alternately for these purposes. There are also areas in the neighborhood where the applicants can take their children to play. Among these are Rock Creek Park, the National Zoo, and a playground at 16th and Lamont Streets, N.W. Additionally, the applicants' front yard can be used as a play area.

22. The opponents testified that the applicants can increase the safety of their lot by erecting a fence with a locked gate and using appropriate lighting. Such improvements would be more aesthetically pleasing than would a structure which crowds the land and blocks the view. The Board agrees with the opponents.

23. The applicants primarily base their request for the variances on the small size and the shape of their lot. They indicated that they need to build the deck since they cannot expand their lot. The applicants further state that their lot occupancy would be consistent with other nearby homes with accessory buildings.

24. The size and shape of the applicant's lot is just like the other neighboring lots. The only distinguishing factor between the applicants and their neighbors is the applicants' desire to build a deck. The desire to build a non-conforming structure is not enough to support variance relief. Most of the accessory buildings constructed on neighboring lots pre-date the present Zoning Regulations. Furthermore, the fact that the applicants' lot is like those of their neighbors militates against granting the variance because the applicants are unable to establish uniqueness, the first element of variance relief.

25. The applicants have not demonstrated that an exceptional practical difficulty will exist if the Zoning Regulations are strictly applied. Since the applicants have alternative ways of using their property, including the manner in which they seek, they encounter no exceptional practical difficulty.

26. Granting the variance will be detrimental to the public good and will impair the intent purposes and integrity of the Zoning plan. The Zoning Regulations were designed to protect property owners from being deprived of the enjoyment of their property due to intrusion by their neighbors. Since the applicants' property is not unique, if the Board grants the requested variance, it would be obligated to grant similar variances requested by applicants' neighbors because their properties are so much alike. The effect of this, it was argued, is to undermine the general applicability of the Zoning Regulations and impair their integrity. The public would consequently suffer from the overcrowding caused by the large number of homes with outside rear structures. Also, the exposure to light and air would be inadequate.

27. The opponents testified that the degree of the variance requested is a factor in determining the effect of that variance on the public and its consistency with the intent and purpose of the Zone plan. It was argued that the applicants' variance request is substantial because they propose to use nearly the entire lot. Therefore, the neighbors in opposition request denial of the application. The Board agrees with the views of the opposition.

28. Three letters of support were submitted on behalf of the applicants. Two letters were submitted by neighbors stating that the applicants' proposal will not have an adverse effect on the light and air surrounding their properties.

#### CONCLUSIONS OF LAW AND OPINION

Based on the record, the Board concludes that the applicants are seeking area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner of the property arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zone plan. The Board concludes that the applicants have not met the burden of proof.

The Board finds that the applicants wish to build a deck to create parking and recreational space, increase safety and enhance the appearance of their lot. The applicants indicated that the area in which they live is unsafe and lacks parking spaces, playgrounds and parks. While erecting a deck may serve the stated purposes, the Board concludes that these are insufficient grounds for sustaining a variance. The Board is obligated to require that the

applicants demonstrate that some peculiar characteristic of the property itself warrants variance relief. The applicants rely on the small size of their lot as the unique quality which justifies variance relief. While the lot may be small, this condition does not make the lot unique because in the area where the subject lot is located, the sizes and shapes of the lots are similar. The Board concludes, therefore, that the applicants have not demonstrated a practical difficulty resulting from the uniqueness of their property.

The Board concludes that several houses in the area in which the subject property is located have accessory buildings which were built prior to the adoption of the Zoning Regulations in 1958. The applicants wish to build a structure which would be non-conforming according to present regulations. The proposed deck would consume an additional 340 square feet of the lot and would leave a three foot (3') rear yard where a twenty foot (20') rear yard is required. To grant variances permitting a further increase in the existing nonconforming status, and the creation of new nonconformities would, in the Board's opinion, impair the intent and purpose of the Zone plan for the R-4 District. The deck would contribute to the overcrowding of the lot and adversely affect the light and air of neighboring properties. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 4-0 (Maybelle Taylor Bennett, William F. McIntosh, Charles R. Norris, and Carrie L. Thornhill to deny; Paula L. Jewell not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

JUL 24 1989

FINAL DATE OF ORDER: \_\_\_\_\_

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

BZA APPLICATION NO. 14760  
PAGE 7

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14760order/LJP50

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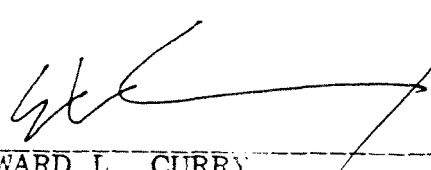
APPLICATION No. 14760

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated JUL 24 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY  
Executive Director

DATE: JUL 24 1989